

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER DISABILITY
DECISION NO. 567 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE

In the Matter of:

TERMINAL DRILLING COMPANY
(Employer)

PRECEDENT
DISABILITY DECISION
No. P-D-385

PACIFIC MUTUAL LIFE INSURANCE CO.
(Insurer-Respondent)

FORMERLY DISABILITY DECISION No. 567
--

STATEMENT OF FACTS

The claimant appealed from the decision of a referee which held that he was not entitled to benefits under Voluntary Plan No.

The claimant was employed by this employer on a forty-hour week with overtime for approximately one year as a well puller's helper. This was heavy and fast work and required lifting. He left his work on February 5, 1955 due to a disability.

Effective February 13, 1955, the claimant filed with the insurer a claim for disability benefits under the voluntary plan. His physician certified on March 5, 1955 that the claimant would be disabled until May 1, 1955 by several conditions including myalgia of right chest and neck and traumatic tendonitis, right elbow. The claimant was referred to another physician for X-rays. On March 23, 1955, the insurer requested the claimant to complete further "forms." The claimant secured a state claim which was filed with the state and which was referred to the insurer. On this claim, his physician, on April 14, 1955, certified to substantially the same

disability, indicated the claimant had been referred for X-rays, and again estimated the claimant would be disabled to May 1, 1955. He also reported that the claimant "inadvisedly attempted to work" from March 19 to March 24 and again on April 6 and 7 and that, on both attempts, myalgia prevented further work. Because of financial distress and no benefits having been paid by the insurer, the claimant attempted to resume work; and, according to the employer's report, he worked thirty-nine hours from March 13 to March 27, 1955 and eight hours from March 28 to April 9, 1955.

Meanwhile, X-rays were completed; and the technician advised the claimant that they disclosed he had a disc in his neck which was "pinching some nerves and deteriorating the disc"; that if by May 10, 1955 the pain proceeded to his hand, surgery would be necessary but, if it did not, he might be helped with treatment. The pain proceeded to his elbow. The claimant secured a halter to relieve the tension on his neck. Due to lack of funds he was unable to continue treatment with his regular physician and moved to his son's home in Booneville.

Finally on May 10, 1955, the insurer paid benefits to the claimant for the period from February 13 to March 19, 1955; and subsequently, in a second check marked "final," paid the claimant benefits from April 15, 1955 to May 1, 1955. Due to his financial condition and need to obtain money for medical care, the claimant again secured work. From June 15 to June 30, 1955, he worked twenty-six and one-half hours and received wages of \$53. During July 1955 he performed easy work intermittently in a sawmill. He was only able to work a few days and then had to stop due to his disability. Until July 1955 he was treated by a physician who advised him that he could be cured if he stopped working.

After his benefits were discontinued by the insurer, the claimant received some forms from the employer for completion, but did nothing because of the insurer's denial of benefits. The insurer made no request of the claimant for additional medical information after March 23, 1955. After this request, the claimant telephoned the insurer's home office in Ventura twice, told them what the X-ray physician had informed him, and submitted the second claim form which his physician completed on

April 14, 1955. His physician did not have the benefit of the X-rays which were taken when he estimated that the claimant could resume work by May 1, 1955. On July 20, 1955, the insurer wrote to the X-ray technician for information with respect to the claimant's condition but received no reply.

The claimant's disability has at all times been the same disability. He testified that he had been continuously disabled from performing his customary work; that the only times he had worked in spite of his disability were to alleviate his family's distress; and that he was still disabled on August 3, 1955, the date of the hearing before the referee.

The voluntary plan provided:

"The Insurance Company will pay Unemployment Compensation Disability Benefits with respect to any uninterrupted period of disability which commences while an employee is insured hereunder."

It further provided:

"Basic Benefits, at the rate of 1/7 of the Weekly Benefit Amount and subject to the Waiting Period and Maximum Benefit Amount as determined from the application of the Employer, for each full day during which the employee is unemployed due to a disability; provided, however, that if such employee received wages or regular wages from the Employer during the period of his disability, Basic Benefits for any day shall not exceed an amount which, when added to such wages or regular wages, produces a sum equal to 1/7 of 70% of his weekly wage immediately prior to the commencement of his disability. If the employee is confined on the order of his physician as a registered bed patient in a hospital for at least one day, any unexpired portion of the waiting period at the time of such confinement shall be waived."

The issues are:

1. Was the claimant's disability interrupted by his return to work on the various dates set forth above?

2. Was the claimant continuously disabled on and after May 1, 1955?

3. Was the further claim barred because the claimant did not furnish the insurer with the requested additional information?

REASONS FOR DECISION

Section 2608-1 of Title 22 of the California Administrative Code provides as follows:

"2608-1. Continuous Period of Unemployment and Disability. A continuous period of unemployment and disability ends:

"(a) When an individual returns to and is able to perform his regular or customary work for a period of more than fourteen (14) days or

"(b) In the case of an unemployed individual when his physician furnishes a statement giving the date, in his opinion, that the individual was able to perform his regular or customary work for a period of more than fourteen (14) days."

In Disability Decision No. 130 we stated:

"... it is our opinion that a claimant is disabled if he is unable to perform his regular or customary work on a full-time basis, on the premise that performance of 'regular or customary work' includes ability to work full-time and at a full production rate as well as ability to perform the type of work which the claimant customarily performs."

In this case, the claimant, whose regular work required at least 40 hours per week, worked only 39 hours during a two-week period from March 13, 1955 to March 27, 1955 and 8 hours during a third week. His physician reported he worked "inadvisedly" from March 19 to March 24 and on April 6 and April 7, and that his disability prevented further work. Under these facts and in view of Section 2608.1 of Title 22 of the California Administrative Code and our definition of "disability" in Disability Decision No. 130, we hold that the claimant's disability was continuous beginning February 6, 1955 and that full benefits were payable from February 13, 1955 to May 1, 1955 except as they may be reduced because of his earnings when he was employed. We also hold that the claimant may not be required to serve an additional waiting period from April 8, 1955 through April 14, 1955 but is entitled to benefits for such week.

The next question to be determined is whether the claimant's disability continued beyond May 1, 1955 or terminated on that date. In previous cases involving the termination of a disability, we have pointed out that lay testimony as well as medical testimony is admissible and that the issue is to be decided by weighing all of the evidence, both lay and medical (Disability Decisions Nos. 34 and 61). In this case, the claimant's testimony establishes that he was continuously disabled from May 1, 1955 to at least August 3, 1955, the date of the hearing before the referee, despite his intermittent light work in June and July which did not interrupt the disability. Since the claimant had an uninterrupted period of disability which commenced while he was insured under the voluntary plan, he is entitled to disability benefits at the full rate from May 1, 1955 to August 3, 1955, except as they may be reduced because of his earnings, and thereafter so long as he is disabled and until the maximum award is exhausted.

With reference to the failure of the claimant to comply with the insurer's request for the completion and submission of the additional medical forms, we hold that the claimant had no duty to do so after the insurer had already notified the claimant that no further benefits would be paid.

DECISION

The decision of the referee is reversed. Benefits are payable to the claimant by the insurer under the voluntary plan to the extent of the maximum award for the entire disability period, subject to proper deductions for wages earned during the periods of light work.

Sacramento, California, January 6, 1956.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

ARNOLD L. MORSE

Pursuant to section 409 of the Unemployment Insurance Code, the above Disability Decision No. 567 is hereby designated as Precedent Decision No. P-D-385.

Sacramento, California, May 2, 1978.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

HARRY K. GRAFE

RICHARD H. MARRIOTT

HERBERT RHODES